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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,629	07/25/2003	Steven J. Jackowski	006267.00002	9627

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EXAMINER

HAMILTON, LALITA M

ART UNIT PAPER NUMBER

3624

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/626,629	<b>Applicant(s)</b> JACKOWSKI ET AL.	
	<b>Examiner</b> Lalita M Hamilton	<b>Art Unit</b> 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>08182004</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Specification***

The abstract of the disclosure is objected to because the use of "such as" is improper. Correction is required. See MPEP § 608.01(b).

Claims 1-23 are objected to because of the following informalities: The Applicant should clarify in the claims what is meant by the term "subscriber". Appropriate correction is required.

The Examiner would also like to suggest adding in "computer implemented" in the preamble of the method claims.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 3-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

35 USC 101 requires that in order to be patentable the invention must be a "new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" (emphasis added).

Claims 3-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to a non-statutory subject matter. Specifically the method claims as presented do not claim a technological basis in the pre-amble and the body of the claim. Without a claimed basis, the claim may be interpreted in an alternative as involving no more than a manipulation of an abstract idea and therefore non-statutory under 35 U.S.C. 101. In

contrast, a method claim that includes in the body of the claim structural / functional interrelationship which can only be computer implemented is considered to have a technological basis [See Ex parte Bowman, 61 USPQ2d 1669, 1671 (Bd. Pat. App. & Inter. 2001) - used only for content and reasoning since not precedential].

In order to over come the 101 rejection above, the following preamble is suggested:

-A computer implemented method for ---, or something similar. Also, in the body of the claim include structural / functional interrelationship which can only be computer implemented.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnson (US 2002/0095400).

Johnson discloses a method and corresponding system for managing differentiated service in information management environments comprising implementing a service level agreement in a network having a data consumption quota limitation for each of a plurality of subscribers to the network and responsive to one of

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the subscribers consuming at least a threshold amount of data, the service level agreement regulating a bandwidth usable over the network by that subscriber (p.27, 237-238); the network includes the Internet (p.2, 11); storing an account for each of a plurality of subscribers, each account having a balance that tracks a network data consumption of the respective subscriber, imposing a bandwidth limitation on a subscriber responsive to the balance of the account of that subscriber dropping below a defined level, and for each account, crediting the balance of the respective account on an intermittent basis (p.26, 232 to p.27, 238 and p.40, 326); imposing the bandwidth limitation includes causing an existing bandwidth limitation to be more restrictive (p.26, 232 to p.27, 238 and p.40, 326); crediting is performed on a periodic basis (p.26, 232 to p.27, 238 and p.40, 326); crediting includes crediting the balance of each account by an amount that depends upon the balance of the respective account (p.26, 232 to p.27, 238 and p.40, 326); reducing bandwidth limitation on one of the subscribers responsive to the balance of the account of that subscriber rising about a predetermined level (p.26, 232 to p.27, 238 and p.40, 326); releasing the bandwidth limitation (p.26, 232 to p.27, 238 and p.40, 326); for each of the subscribers, reducing the balance of the account of the respective subscriber by an amount based upon a volume of network data consumption by that subscriber (p.26, 232 to p.27, 238 and p.40, 326); sending information to each of the subscribers indicating the balance of the account of each respective subscriber (p.26, 232 to p.27, 238 and p.40, 326—bill sent to the customer by email, postal mail, etc.); balance for each account is an upstream, downstream, or burst balance (p.26, 232 to p.27, 238 and p.40, 326); imposing the bandwidth limitation

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includes imposing the bandwidth limitation on the subscriber responsive to the balance of the account that subscriber dropping below a defined level and at further depending upon least one of a time of day and a current network congestion level (p.26, 232 to p.27, 238 and p.40, 326); sending information to the subscriber whether the bandwidth is being regulated (p.40, 326-bill); an apparatus configured to regulate a bandwidth available to one of the subscribers based on whether a predetermined volume of data has previously been consumed by that subscriber (p.27, 237-238); and storing a plurality of balances for each of a plurality of subscribers, each balance tracking a different aspect of network data consumption of the respective subscriber, imposing a bandwidth limitation on a subscriber responsive to at least one of the balances of that subscriber dropping below a defined level, and for each subscriber, crediting at least one of the balances of the respective subscriber (p.26, 232 to p.27, 238 and p.40, 326).

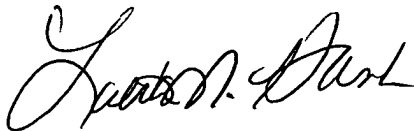
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lalita M Hamilton whose telephone number is (703) 306-5715. The examiner can normally be reached on Tuesday-Thursday (8:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



LMH